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Administration of justice at the United Nations

Report of the Fifth Committee

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I. Introduction

1. At its 2nd plenary meeting, on 16 September 2016, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its seventy-first session the item entitled "Administration of justice at the United Nations" and to allocate it to the Fifth Committee.

2. The Fifth Committee considered the item at its 4th and 23rd meetings, on 11 October and 23 December 2016. Statements and observations made in the course of the Committee's consideration of the item are reflected in the relevant summary records.[1]

3. For its consideration of the item, the Committee had before it the following documents:

(a) Report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/71/157);

(b) Report of the Secretary-General on the findings and recommendations of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations, and revised estimates relating to the programme budget for the biennium 2016-2017 (A/71/163);

(c) Report of the Secretary-General on the administration of justice at the United Nations (A/71/164);

(d) Report of the Internal Justice Council on the administration of justice at the United Nations (A/71/158);

[1] A/C.5/71/SR.4 and A/C.5/71/SR.23.

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(e) Related report of the Advisory Committee on Administrative and Budgetary Questions (A/71/436);

(f) Note by the Secretary-General transmitting the report of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations (A/71/62/Rev.1);

(g) Notes by the Secretary-General transmitting the report of the Joint Inspection Unit on the review of the organizational ombudsman services across the United Nations system (A/71/117 and A/71/117/Corr.1) and his comments and those of the United Nations System Chief Executives Board for Coordination thereon (A/71/117/Add.1);

(h) Letters dated 26 October 2016 from the President of the General Assembly to the Chair of the Fifth Committee (A/C.5/71/10 and A/C.5/71/11).

II. Consideration of draft resolution A/C.5/71/L.13

4. At its 23rd meeting, on 23 December, the Committee had before it a draft resolution entitled "Administration of justice at the United Nations" (A/C.5/71/L.13), submitted by the Chair of the Committee on the basis of informal consultations coordinated by the representative of the Republic of Korea.

5. At the same meeting, the Committee adopted draft resolution A/C.5/71/L.13 without a vote (see para. 6).

III. Recommendation of the Fifth Committee

6. The Fifth Committee recommends to the General Assembly the adoption of the following draft resolution:

Administration of justice at the United Nations

The General Assembly,

Recalling section XI of its resolution 55/258 of 14 June 2001 and its resolutions 57/307 of 15 April 2003, 59/266 of 23 December 2004, 59/283 of 13 April 2005, 61/261 of 4 April 2007, 62/228 of 22 December 2007, 63/253 of 24 December 2008, 64/233 of 22 December 2009, 65/251 of 24 December 2010, 66/237 of 24 December 2011, 67/241 of 24 December 2012, 68/254 of 27 December 2013, 69/203 of 18 December 2014 and 70/112 of 14 December 2015,

Having considered the reports of the Secretary-General on administration of justice at the United Nations[1] and on the activities of the Office of the United Nations Ombudsman and Mediation Services,[2] the note by the Secretary-General transmitting the report of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations,[3] the report of the Secretary-General on the findings and recommendations of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations, and revised estimates relating to the programme budget for the biennium 2016-2017,[4] the report of the Internal Justice Council on administration of justice at the United Nations[5] and the related report of the Advisory Committee on Administrative and Budgetary Questions,[6] as well as the letters dated 26 October 2016 from the President of the General Assembly to the Chair of the Fifth Committee,[7]

Having also considered the note by the Secretary-General transmitting the report of the Joint Inspection Unit entitled "Review of the organizational ombudsman services across the United Nations system"[8] and the note by the Secretary-General transmitting his comments and those of the United Nations System Chief Executives Board for Coordination thereon,[9]

1. *Takes note* of the reports of the Secretary-General on administration of justice at the United Nations[1] and on the activities of the Office of the United Nations Ombudsman and Mediation Service,[2] the note by the Secretary-General transmitting the report of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations,[3] the report of the Secretary-General on the findings and recommendations of the Interim Independent

[1] A/71/164.
[2] A/71/157.
[3] A/71/62/Rev.1.
[4] A/71/163.
[5] A/71/158.
[6] A/71/436.
[7] A/C.5/71/10 and A/C.5/71/11.
[8] A/71/117 and Corr.1.
[9] A/71/117/Add.1.

Assessment Panel on the system of administration of justice at the United Nations, and revised estimates relating to the programme budget for the biennium 2016-2017,[4] the report of the Internal Justice Council on administration of justice at the United Nations[5] and the related report of the Advisory Committee on Administrative and Budgetary Questions;[6]

2. *Endorses* the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions;

I
System of administration of justice

3. *Emphasizes* the importance of the principle of judicial independence in the system of administration of justice;

4. *Stresses* the importance of ensuring access for all staff members to the system of administration of justice, regardless of their duty station;

5. *Acknowledges* the evolving nature of the system of administration of justice and the need to carefully monitor its implementation to ensure that it remains within the parameters set out by the General Assembly;

6. *Notes with appreciation* the achievements of the system of administration of justice since its inception with regard to both the disposal of the backlog and the addressing of new cases, as well as the increased use of informal resolution mechanisms;

7. *Stresses* the importance of continuous consultation among relevant stakeholders in fostering a dialogue-oriented culture across the Organization;

8. *Reaffirms* its decision, contained in paragraph 4 of its resolution 61/261, to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike;

9. *Recalls* its decision that the interim independent assessment of the system of administration of justice should include consideration of the relationship between the formal and informal systems and whether the aims and objectives of the system set out in its resolution 61/261 are being achieved in an efficient and cost-effective manner;

10. *Notes with appreciation* the findings of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations that the system has made a good start and is an improvement over the previous system and that the aims and objectives of the system have been achieved to a very great extent;

11. *Recognizes* that there is still room for further improvement in the system of administration of justice at the United Nations, stresses the importance of the consideration of the recommendations of the Interim Independent Assessment Panel that can contribute to further enhancement of the system, and in this regard requests the Secretary-General to report thereon, as appropriate;

12. *Endorses* recommendations 9, 13, 15, 33, 35 and 36 contained in the report of the Interim Independent Assessment Panel, and requests the Secretary-General to ensure their implementation, within existing resources, and to report thereon in the context of future reports under this agenda item;

13. *Recalls* recommendation 27 contained in the report of the Interim Independent Assessment Panel, notes that the question of further flexibility for extension or suspension of deadlines is currently under review, and looks forward to the outcome of that review;

14. *Notes* that a letter dated 26 October 2016 was sent from the President of the General Assembly to the Chair of the Fifth Committee transmitting a letter dated 30 September 2016 from the President of the Dispute Tribunal to the President of the General Assembly[16] in respect of some of the comments contained in the report of the Secretary-General on the findings and recommendations of the Interim Independent Assessment Panel;

15. *Emphasizes* the necessity and urgency of improving human resources management in preventing disputes and enhancing accountability, reiterates the importance of transparency and fairness in decision-making in preventing conflicts, requests the Secretary-General to take into account the observations and recommendations of the Interim Independent Assessment Panel on the key causes of disputes, and also requests the Secretary-General to continue to undertake all efforts to ensure the proper and consistent application of the Staff Regulations and Rules of the United Nations in order to reduce the need for cases to be brought to both the formal and informal systems;

16. *Requests* the Secretary-General to report on measures taken to strengthen measures for protection against retaliation in his future reports;

17. *Notes* the observations of the Internal Justice Council, the Interim Independent Assessment Panel, the Joint Inspection Unit and the Sixth Committee on non-staff personnel, and requests the Secretary-General to prepare a compilation setting out the categories of non-staff personnel and the remedies available to them, in tabular form, and providing figures for the number of disputes brought by non-staff personnel and the types of remedies used since 2009, to the extent available, and considers that, in order to assess how effective remedies are and to inform the discussion on the matter at the seventy-second session of the General Assembly, the following information should be included:

(a) The number of disputes brought before the system of justice and/or any other measures for addressing disputes available for each category of non-staff personnel and an indication of how such disputes were resolved;

(b) The number of disputes brought before national jurisdictions and an indication of how such disputes were resolved;

(c) The practical measures that have been taken so far by the United Nations to ensure a proper implementation of the system and to avoid gaps, as well as any other good practices, including in such matters as translation of documents into local languages, the ability to be heard, access to arbitration, information given to

[16] A/C.5/71/11.

non-staff personnel on available remedies and so on; it is suggested that the Secretariat prepare a questionnaire to that effect;

(d) Information on how the specialized agencies and related bodies of the United Nations system provide remedies to non-staff personnel;

18. *Reiterates its request* to the Secretary-General to include information on disputes involving non-staff personnel in the context of both management evaluation and informal mediation in his future reports, and requests that he provide information on existing measures to institutionalize good management practice that aim to avoid or mitigate disputes involving the different categories of non-staff personnel;

II
Informal system

19. *Recognizes* that the informal system of administration of justice is an efficient and effective option both for staff who seek redress of grievances and for the participation of managers;

20. *Reaffirms* that the informal resolution of conflict is a crucial element of the system of administration of justice, emphasizes that all possible use should be made of the informal system in order to avoid unnecessary litigation, without prejudice to the basic right of staff members to access the formal system, and encourages recourse to the informal resolution of disputes;

21. *Welcomes* the promulgation of the revised terms of reference and guidelines for the Office of the United Nations Ombudsman and Mediation Services;[11]

22. *Encourages* the Office of the United Nations Ombudsman and Mediation Services to intensify its outreach activities to encourage informal dispute resolution;

23. *Recalls* paragraph 36 of the report of the Advisory Committee, and stresses the continued importance of the informal part of the system of administration of justice in taking early action to prevent or limit cases of litigation, encouraging amicable resolution of disputes and fostering a more collaborative and harmonious culture;

24. *Recognizes* the efforts of the Office of the United Nations Ombudsman and Mediation Services in enhancing efforts aimed at the informal resolution of conflict, and requests the Secretary-General to provide more detailed information in his next report to the General Assembly on the impact of conflict-prevention training and on efforts to further enhance cooperation between the informal and formal parts of the system of administration of justice;

25. *Emphasizes* the importance of both staff and managers understanding and adopting conflict competency skills in order to prevent conflicts, cope with potential or actual conflicts and maintain resilience, and in this regard notes with appreciation the activities of the Office of the United Nations Ombudsman and Mediation Services to promote conflict competence at all levels of the Organization;

[11] ST/SGB/2016/7.

26. *Welcomes* the analysis of the root causes of conflict included in the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services, stresses the importance of improving management performance and staff communications, and urges the Secretary-General to address the systemic issues identified in the report in order to improve upon the Organization's policies and procedures;

27. *Recognizes* that access to the Office of the United Nations Ombudsman and Mediation Services is a challenge for staff in the field, including for those in special political missions, encourages the development of innovative measures to address those challenges, and requests the Secretary-General to report thereon to the General Assembly at the main part of its seventy-second session;

III
Formal system

28. *Recognizes* the ongoing positive contribution of the Office of Staff Legal Assistance to the system of administration of justice;

29. *Recalls* its decision, contained in paragraph 5 of its resolution 68/254, and reiterates that decisions taken by the Dispute Tribunal and the Appeals Tribunal shall conform with the provisions of General Assembly resolutions on issues related to human resources management;

30. *Also recalls* article 10.6 of the statute of the Dispute Tribunal and article 9.2 of the statute of the Appeals Tribunal, stresses the ability of the Tribunals to award costs against parties that manifestly abuse the proceedings, and encourages the Tribunals to proactively manage cases and/or to summarily dismiss cases under appropriate circumstances;

31. *Emphasizes* the importance of the publication of the judgments of the Dispute and Appeals Tribunals to make the reasoning behind the decisions well known to the entire structure of the Organization, for improving managerial practices and determining the proper implementation of the Staff Regulations and Rules of the United Nations and for the predictability of the justice system, and encourages the exploration of better approaches when referring to personal data in the judgments of the Tribunals, with the aim of protecting the privacy of individuals who have no means to respond publicly;

32. *Recalls* paragraph 15 of the report of the Advisory Committee, and decides to extend the three ad litem judges and the current incumbent judge positions for one year, from 1 January to 31 December 2017;

33. *Requests* the Secretary-General to continue to track the data on the number of cases received by the Management Evaluation Unit and the Dispute Tribunal in order to identify any emerging trends and to include his observations on those statistics in future reports;

34. *Notes* the ongoing work of the interdepartmental working group to further explore the delegation of authority with regard to disciplinary matters, and looks forward to receiving updates in the context of the next report of the Secretary-General;

35. *Requests* the Secretary-General to continue to ensure the accountability of managers whose decisions have been established to be grossly negligent, according to the applicable Staff Regulations and Rules of the United Nations, and which have led to litigation and subsequent financial loss, and to report thereon to the General Assembly at its seventy-second session;

36. *Encourages* the Secretary-General to proactively engage in a process to review referrals for accountability as well as other potential options for accountability, with the aim of ensuring the enforcement of accountability, and to report thereon to the General Assembly at its seventy-second session;

37. *Notes* recommendations 26 and 38 of the Interim Independent Assessment Panel and the related observations of the Internal Justice Council, and in this regard reiterates the important role of the Management Evaluation Unit as a first step in the formal system of the administration of justice towards enhancing transparency in decision-making, providing opportunities for the Administration to correct contested administrative decisions where mistakes have been made, ensuring that managers continue to remain accountable for their administrative decisions and preventing unnecessary litigation, and requests the Secretary-General to report on the effectiveness of the Management Evaluation Unit to the General Assembly at its seventy-second session;

38. *Takes note* of the information provided regarding the voluntary supplemental funding mechanism for additional resources for the Office of Staff Legal Assistance, and decides to extend the experimental period for the mechanism for one year, from 1 January to 31 December 2017;

39. *Recalls* paragraph 7 of the report of the Advisory Committee, and requests the Secretary-General to explore options to ensure the sustainability of the voluntary supplemental funding mechanism and to report thereon to the General Assembly at the main part of its seventy-second session;

40. *Acknowledges* the continued efforts made with respect to incentives for staff not to opt out of the voluntary supplemental funding mechanism, and in this regard encourages the Secretary-General to strengthen such incentives, particularly in locations where the participation rate is low;

41. *Requests* the Secretary-General to continue to collect and examine data relating to staff contributions to the Office of Staff Legal Assistance and to report thereon to the General Assembly in his next report;

42. *Stresses* the need to continue to explore means to raise awareness among staff of the importance of financial contributions to the Office of Staff Legal Assistance;

43. *Approves* the Code of Conduct for Legal Representatives and Litigants in Person annexed to the present resolution;

44. *Also approves* the proposal of the Secretary-General to amend the statutes of the Dispute and Appeals Tribunals as follows:

(a) Statute of the Dispute Tribunal, article 4, amended paragraph 3 (a):

3 (a) Be of high moral character and impartial;

(b) Statute of the Dispute Tribunal, article 4, new paragraph 3 (c):

3 (c) Be fluent, both orally and in writing, in English or French.

(c) Statute of the Dispute Tribunal, article 4, amended paragraph 7:

7. The Dispute Tribunal shall elect a President who shall have the authority, inter alia, to monitor the timely delivery of judgments.

(d) Statute of the Appeals Tribunal, article 4, new paragraph 4:

4. The President shall have the authority, inter alia, to monitor the timely delivery of judgments.

IV
Other issues

45. *Stresses* that the Internal Justice Council can help to ensure independence, professionalism and accountability in the system of administration of justice, and requests the Secretary-General to entrust the Council with including the views of both the Dispute Tribunal and the Appeals Tribunal in its reports;

46. *Invites* the Sixth Committee to consider the legal aspects of the report to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters;

47. *Recalls* paragraph 4 of the report of the Advisory Committee, and decides to consider the issues related to resource requirements for improving the functioning of a transparent, professionalized, adequately resourced and decentralized system of administration of justice at the United Nations at its seventy-second session, and in this regard requests the Secretary-General to include updated information on the matter, taking into account the existing and potential challenges, including workload, funding arrangements and potential disputes arising from mandatory mobility, in the context of his next report on administration of justice.

Annex

Code of Conduct for Legal Representatives and Litigants in Person

Preamble

Whereas the General Assembly, in its resolution 69/203 of 18 December 2014, stressed the need to ensure that all individuals acting as legal representatives appearing before the United Nations Dispute Tribunal and the United Nations Appeals Tribunal are subject to the same standards of professional conduct, and requested the submission of a single code of conduct for all legal representatives, without prejudice to other lines of disciplinary authority,

Whereas appropriate standards should also be adopted for litigants in person,

The following provisions are adopted:

Article 1
Definitions

In the present Code, the following terms shall mean:

Code: the present Code of Conduct for Legal Representatives and Litigants in Person acting in proceedings before the United Nations Dispute Tribunal or the United Nations Appeals Tribunal, as approved by the General Assembly;

Legal representative: an individual who acts on behalf of a party in proceedings before the United Nations Dispute Tribunal or the United Nations Appeals Tribunal;

Litigant in person: an individual who represents himself or herself in proceedings before the United Nations Dispute Tribunal or the United Nations Appeals Tribunal;

Party: the applicant or the respondent in proceedings before the United Nations Dispute Tribunal or the appellant or the respondent in proceedings before the United Nations Appeals Tribunal;

Statutes: the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as adopted by the General Assembly in its resolution 63/253, as amended;

Rules of procedure: the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as approved by the General Assembly in its resolution 64/119, as amended;

United Nations Dispute Tribunal: the Tribunal established by its statute as the first instance of the two-tier formal system of administration of justice at the United Nations;

United Nations Appeals Tribunal: the Tribunal established by its statute as the second instance of the two-tier formal system of administration of justice at the United Nations and as the final instance for those entities that have accepted its jurisdiction under article 2, paragraph 10, of its statute;

Tribunal(s): the United Nations Dispute Tribunal and United Nations Appeals Tribunal, individually or collectively.

Article 2
Purpose

The present Code describes the conduct expected of legal representatives and litigants in person in proceedings before the Tribunals in the interest of the fair and proper administration of justice.

Article 3
Acknowledgement

By acting in proceedings before the Tribunals, legal representatives and litigants in person acknowledge the provisions of the present Code.

Article 4
Basic standards

1. Legal representatives and litigants in person shall maintain the highest standards of integrity and shall at all times act honestly, candidly, fairly, courteously, in good faith and without regard to external pressures or extraneous considerations.

2. Legal representatives and litigants in person shall act diligently and efficiently and shall avoid unnecessary delay in the conduct of proceedings.

3. Legal representatives should encourage and facilitate dialogue between the parties with a view to settling disputes in appropriate cases.

4. Legal representatives shall maintain the highest standards of professionalism and shall act in the best interests of the party they represent, subject always to upholding the interests of justice and ethical standards.

Article 5
Conflict of interest

1. Legal representatives shall put the interests of the party they represent before their own interests and the interests of others, and shall not represent conflicting interests in proceedings.

2. Where a conflict of interest arises, legal representatives shall promptly:

(a) Disclose the conflict to the party they represent;

(b) Take all reasonable steps to mitigate the conflict; and

(c) Withdraw themselves as legal representatives if the conflict cannot be mitigated.

3. A party may waive a conflict of interest and consent to the legal representative continuing to act in proceedings.

Article 6
Confidentiality

1. Legal representatives and litigants in person shall maintain the confidentiality of the proceedings of the Tribunals in accordance with the provisions of the statutes and rules of procedure, or as otherwise ordered by the Tribunals.

2. Legal representatives and litigants in person shall respect the confidential character of any information imparted to them in confidence in the proceedings.

3. Legal representatives and litigants in person shall not disclose, except as appropriate in the normal course of the proceedings, any document which is inviolable in accordance with applicable legal instruments on privileges and immunities of the United Nations, its specialized agencies or other United Nations entities, unless such document is already public or by authorization of the Secretary-General or the appropriate official of the relevant entity before the Tribunal.

4. The obligations set forth in this article remain even after proceedings before the Tribunals have ended.

Article 7
Withdrawal of representation

1. Legal representatives may withdraw their representation of a party where they reasonably consider that good cause to do so exists.

2. In withdrawing representation, legal representatives shall take steps to the extent reasonably practicable to protect the party's interests.

3. Legal representatives shall promptly communicate such withdrawal in writing to the party they represent and the relevant Registry.

Article 8
Relations with the Tribunals

1. Legal representatives and litigants in person shall assist the Tribunals in maintaining the dignity and decorum of proceedings and avoiding disorder and disruption.

2. Legal representatives and litigants in person shall be diligent in complying with the statutes, rules of procedure, practice directions and orders, rulings or directions that may be issued by the Tribunals.

Article 9
Administration of the Code

The Tribunals may issue orders, rulings or directions in order to implement the provisions of the present Code.